

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 56-577, 56-580, 56-581.1, 56-582, 56-585, 56-590, 58.1-
2 2901, 58.1-2902, and 58.1-3814 of the Code of Virginia and to amend the Code of
3 Virginia by adding in Chapter 23 of Title 56 a section numbered 56-596, relating to the
4 Virginia Electric Utility Restructuring Act; competition for electric services; default
5 service; functional separation; collection of taxes on consumption of electricity.

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 56-577, 56-580, 56-581.1, 56-582, 56-585, 56-590, 58.1-2901, 58.1-2902, and**
8 **58.1-3814 of the Code of Virginia are amended and reenacted, and that the Code of**
9 **Virginia is amended by adding in Chapter 23 of Title 56 a section numbered 56-596, as**
10 **follows:**

11 § 56-577. Schedule for transition to retail competition; Commission authority.

12 A. The transition to retail competition for the purchase and sale of electric energy shall
13 be implemented as follows:

14 1. On or before January 1, 2001, each incumbent electric utility owning, operating,
15 controlling, or having an entitlement to transmission capacity shall join or establish a regional
16 transmission entity, which entity may be an independent system operator, to which such utility
17 shall transfer the management and control of its transmission system, subject to the provisions
18 of § 56-579.

19 2. On and after January 1, 2002, retail customers of electric energy within the
20 Commonwealth shall be permitted to purchase energy from any supplier of electric energy
21 licensed to sell retail electric energy within the Commonwealth during and after the period of
22 transition to retail competition, subject to the following:

23 a. The Commission shall separately establish for each utility a phase-in schedule for
24 customers by class, and by percentages of class, to ensure that by January 1, 2004, all retail

1 customers of each utility are permitted to purchase electric energy from any supplier of electric
2 energy licensed to sell retail electric energy within the Commonwealth.

3 b. The Commission shall also ensure that residential and small business retail
4 customers are permitted to select suppliers in proportions at least equal to that of other
5 customer classes permitted to select suppliers during the period of transition to retail
6 competition.

7 3. On and after January 1, 2002, the generation of electric energy shall no longer be
8 subject to regulation under this title, except as specified in this chapter.

9 4. On and after January 1, 2004, all retail customers of electric energy within the
10 Commonwealth, regardless of customer class, shall be permitted to purchase electric energy
11 from any supplier of electric energy licensed to sell retail electric energy within the
12 Commonwealth.

13 B. The Commission may delay or accelerate the implementation of any of the provisions
14 of this section, subject to the following:

15 1. Any such delay or acceleration shall be based on considerations of reliability, safety,
16 communications or market power; and

17 2. Any such delay shall be limited to the period of time required to resolve the issues
18 necessitating the delay, but in no event shall any such delay extend the implementation of
19 customer choice for all customers beyond January 1, 2005.

20 The Commission shall, within a reasonable time, report to the General Assembly, or any
21 legislative entity monitoring the restructuring of Virginia's electric industry, any such delays and
22 the reasons therefor.

23 C. Except as may be otherwise provided in this chapter, prior to and during the period of
24 transition to retail competition, the Commission may conduct pilot programs encompassing
25 retail customer choice of electric energy suppliers, consistent with its authority otherwise
26 provided in this title and the provisions of this chapter.

1 D. The Commission shall promulgate such rules and regulations as may be necessary
2 to implement the provisions of this section.

3 E. By January 1, 2002, the Commission shall promulgate regulations establishing
4 whether and, if so, for what minimum periods, customers who request service from an
5 incumbent electric utility pursuant to subsection D of § 56-582 or a default service provider,
6 after a period of receiving service from other suppliers of electric energy, shall be required to
7 use such service from such incumbent electric utility or default service provider, as determined
8 to be in the public interest by the Commission.

9 § 56-580. Transmission and distribution of electric energy.

10 A. The Commission shall continue to regulate pursuant to this title the distribution of
11 retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited
12 by federal law, the transmission of electric energy in the Commonwealth.

13 B. The Commission shall continue to regulate, to the extent not prohibited by federal
14 law, the reliability, quality and maintenance by transmitters and distributors of their
15 transmission and retail distribution systems.

16 C. The Commission shall develop codes of conduct governing the conduct of incumbent
17 electric utilities and affiliates thereof when any such affiliates provide, or control any entity that
18 provides, generation, distribution, transmission or any services made competitive pursuant to §
19 56-581.1, to the extent necessary to prevent impairment of competition.

20 D. The Commission may permit the construction and operation of electrical generating
21 facilities upon a finding that such generating facility and associated facilities including
22 transmission lines and equipment (i) will have no material adverse effect upon reliability of
23 electric service provided by any regulated public utility and (ii) are not otherwise contrary to the
24 public interest. In review of its petition for a certificate to construct and operate a generating
25 facility described in this subsection, the Commission shall give consideration to the effect of
26 the facility and associated facilities, including transmission lines and equipment, on the

1 environment and establish such conditions as may be desirable or necessary to minimize
2 adverse environmental impact as provided in § 56-46.1.

3 E. Nothing in this section shall impair the distribution service territorial rights of
4 incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution
5 services within their exclusive service territories as established by the Commission. Nothing in
6 this chapter shall impair the Commission's existing authority over the provision of electric
7 distribution services to retail customers in the Commonwealth including, but not limited to, the
8 authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

9 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility
10 owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter
11 apply to any such electric utility unless (i) that municipality elects to have this chapter apply to
12 that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric
13 energy to any retail customer outside the geographic area that was served by such
14 municipality as of July 1, 1999. If an electric utility owned or operated by a municipality as of
15 July 1, 1999, is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of
16 this subsection, then in such event the provisions of this chapter applicable to incumbent
17 electric utilities shall also apply to any such utility, mutatis mutandis.

18 § 56-581.1. Competitive retail electric billing and metering.

19 A. ~~On or before Effective January 1, 2001-2002, the Commission (i) distributors shall~~
20 ~~recommend to the Legislative Transition Task Force whether metering services, offer~~
21 ~~consolidated billing services, or both, for which competition has not been otherwise authorized~~
22 ~~by law, may be provided by persons licensed to provide such services. The Commission's~~
23 ~~recommendation under this subsection as to the appropriateness of and date of~~
24 ~~commencement of competition (i) shall include a draft plan for implementation of competition~~
25 ~~for metering services and billing services and (ii) may vary by service, type of seller, region,~~
26 ~~incumbent electric utility, and customer group. Such recommendation and draft plan, which~~
27 ~~shall be developed after notice and an opportunity for hearing, to licensed suppliers,~~

1 aggregators, and retail customers, and (ii) licensed suppliers and aggregators shall be
2 permitted to bill all retail customers separately for services rendered on and after the first
3 regular meter reading date after January 1, 2002, subject to conditions, regulations, and
4 licensing requirements established by the Commission.

5 B. Effective January 1, 2003, licensed suppliers and aggregators may offer
6 consolidated billing service to distributors and retail customers for services rendered on and
7 after the first regular meter reading date after January 1, 2003, subject to conditions,
8 regulations, and licensing requirements established by the Commission.

9 C. Upon application by a distributor or upon its own motion, the Commission may delay
10 any element of the competitive provision of billing services to retail customers for the period of
11 time necessary, but no longer than one year, to resolve issues arising from considerations of
12 billing accuracy, timeliness, quality, consumer readiness, or adverse effects upon development
13 of competition in electric service. The Commission shall report any such delays and the
14 underlying reasons therefor to the Legislative Transition Task Force within a reasonable time.

15 D. The Commission shall promulgate such rules and regulations as may be necessary
16 to implement the provisions of this section in a manner that is consistent with its
17 Recommendation and Draft Plan filed with the Legislative Transition Task Force on December
18 12, 2000, to facilitate the development of effective competition in electric service for all
19 customer classes, and to ensure reasonable levels of billing accuracy, timeliness, and quality,
20 and adequate consumer readiness and protection. Such rules and regulations shall include
21 provisions regarding the licensing of persons seeking to sell, offering to sell, or selling
22 competitive billing services, pursuant to the licensure requirements of § 56-587.

23 E. The Commission shall approve the provision of competitive metering services by
24 licensed providers for large industrial and large commercial customers of investor-owned
25 distributors on or after January 1, 2002, and for residential and small business customers of
26 investor-owned distributors on or after January 1, 2003, as determined to be in the public
27 interest by the Commission. Such approvals shall:

1 1. Be consistent with the goal of facilitating the development of effective competition in
2 electric service for all customer classes;

3 2. Take into account the readiness of customers and suppliers to buy and sell such
4 services;

5 3. Take into account the technological feasibility of furnishing any such services on a
6 competitive basis;

7 4. Take into account whether reasonable steps have been or will be taken to educate
8 and prepare customers for the implementation of competition for any such services;

9 5. Not jeopardize the safety, reliability or quality of electric service;

10 6. Consider the degree of control exerted over utility operations by utility customers;

11 7. Not adversely affect the ability of an incumbent electric utility authorized or obligated
12 to provide electric service to customers who do not buy such services from competitors to
13 provide electric service to such customers at reasonable rates; ~~and~~

14 8. Give due consideration to the potential effects of such determinations on utility tax
15 collection by state and local governments in the Commonwealth; and

16 9. Ensure the technical and administrative readiness of a distributor to coordinate and
17 facilitate the provision of competitive metering services for its customers.

18 ~~B. Competition for metering services, billing services, or both, may be implemented~~
19 ~~concurrently or pursuant to separate schedules as determined by the General Assembly.~~

20 ~~C. If, on or before January 1, 2001, the Commission has not recommended that~~
21 ~~competition is appropriate for (i) metering services, (ii) billing services, or (iii) any portion of~~
22 ~~either service, the Commission shall continue to consider such matters and report thereon to~~
23 ~~the Legislative Transition Task Force no less frequently than annually until such services are~~
24 ~~made competitive.~~

25 Upon the reasonable request of a distributor, the Commission shall delay the provision
26 of competitive metering service in such distributor's service territory until January 1, 2003, for

1 large industrial and large commercial customers, and after January 1, 2004, for residential and
2 small business customers.

3 F. The Commission shall promulgate such rules and regulations as may be necessary
4 to implement the authorization related to competitive metering services provided for in
5 subsection E. Such rules and regulations shall include provisions regarding the licensing of
6 persons seeking to sell, offering to sell, or selling competitive metering services, pursuant to
7 the licensure requirements of § 56-587.

8 ~~D.G. Upon enactment of legislation making competitive metering services, billing~~
9 ~~services, or both, an~~ An incumbent electric utility shall undertake such coordination, coordinate
10 with persons licensed to provide such service competitive metering service, billing services, or
11 both, as the Commission deems reasonably necessary to the development of such
12 competition, provided that the reasonable costs of such coordination are recovered by such
13 utility. The foregoing shall apply to an affiliate of an incumbent electric utility if such affiliate
14 controls a resource that is necessary to the coordination required of the incumbent electric
15 utility by this subsection.

16 ~~E. Any person seeking to sell, offering to sell, or selling competitive metering services,~~
17 ~~competitive billing services, or both, shall be subject to the licensure requirements of § 56-587.~~

18 H. Notwithstanding the provisions of § 56-582, the Commission shall allow a distributor
19 to recover its costs directly associated with the implementation of billing or metering
20 competition through a tariff for all licensed suppliers, but not those that would be incurred by
21 such utilities in any event as part of the restructuring under this Act. The Commission shall
22 also determine the most appropriate method of recovering such costs through a tariff for such
23 licensed suppliers; however, such method shall not unreasonably affect any customer for
24 which the service is not made competitive.

25 ~~F.I. Upon enactment of legislation making competitive a service presently provided by~~
26 ~~an incumbent electric utility, the~~ The Commission shall adjust the rates for any noncompetitive
27 services provided by such utility a distributor so that such rates do not reflect costs associated

1 with or properly allocable to the service made subject to competition. Such adjustment may be
2 accomplished through unbundled rates, bill credits, the distributor's tariffs for licensed
3 suppliers, or other methods as determined by the Commission.

4 J. Municipal electric utilities shall not be required to provide consolidated billing
5 services to licensed suppliers, aggregators or retail customers. Municipal electric utilities and
6 utility consumer services cooperatives shall not be required to undertake coordination of the
7 provision of consolidated or direct billing services by suppliers and aggregators; however, the
8 exemptions set forth in this subsection shall not apply if any such municipal electric utility or
9 utility consumer services cooperative, or its affiliate, offers competitive electric energy supply to
10 retail customers in the service territory of any other Virginia incumbent electric utility. The
11 Commission may permit any municipal electric utility or utility consumer services cooperative
12 that pursues such competitive activity to maintain such exemption upon application to the
13 Commission demonstrating good cause for relief. In addition, upon petition by a utility
14 consumer services cooperative, the Commission may approve the provision of competitive
15 metering services by licensed providers for large industrial and large commercial customers of
16 such cooperative on or after January 1, 2002, and for residential and small business
17 customers of such cooperative on or after January 1, 2003, as determined to be in the public
18 interest by the Commission consistent with the criteria set forth in subsection E.

19 § 56-582. Rate caps.

20 A. The Commission shall establish capped rates, effective January 1, 2001, and
21 expiring on July 1, 2007, for each service territory of every incumbent utility as follows:

22 1. Capped rates shall be established for customers purchasing bundled electric
23 transmission, distribution and generation services from an incumbent electric utility.

24 2. Capped rates for electric generation services, only, shall also be established for the
25 purpose of effecting customer choice for those retail customers authorized under this chapter
26 to purchase generation services from a supplier other than the incumbent utility during this
27 period.

1 3. The capped rates established under this section shall be the rates in effect for each
2 incumbent utility as of the effective date of this chapter, or rates subsequently placed into
3 effect pursuant to a rate application filed by an incumbent electric utility with the Commission
4 prior to January 1, 2001, and subsequently approved by the Commission, and made by an
5 incumbent electric utility that is not currently bound by a rate case settlement adopted by the
6 Commission that extends in its application beyond January 1, 2002. If such rate application is
7 filed, the rates proposed therein shall go into effect on January 1, 2001, but such rates shall be
8 interim in nature and subject to refund until such time as the Commission has completed its
9 investigation of such application. Any amount of the rates found excessive by the Commission
10 shall be subject to refund with interest, as may be ordered by the Commission. The
11 Commission shall act upon such applications prior to commencement of the period of transition
12 to customer choice. Such rate application and the Commission's approval shall give due
13 consideration, on a forward-looking basis, to the justness and reasonableness of rates to be
14 effective for a period of time ending as late as July 1, 2007. The capped rates established
15 under this section, which include rates, tariffs, electric service contracts, and rate programs
16 (including experimental rates, regardless of whether they otherwise would expire), shall be
17 such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that
18 experimental rates and rate programs may be closed to new customers upon application to the
19 Commission. Such capped rates shall also include rates for new services where, subsequent
20 to January 1, 2001, rate applications for any such rates are filed by incumbent electric utilities
21 with the Commission and are thereafter approved by the Commission. In establishing such
22 rates for new services, the Commission may use any rate method that promotes the public
23 interest and that is fairly compensatory to any utilities requesting such rates.

24 B. The Commission may adjust such capped rates in connection with the following: (i)
25 utilities' recovery of fuel costs pursuant to § 56-249.6, (ii) any changes in the taxation by the
26 Commonwealth of incumbent electric utility revenues, (iii) any financial distress of the utility
27 beyond its control, (iv) with respect to cooperatives that were not members of a power supply

1 cooperative on January 1, 1999, and as long as they do not become members, their cost of
2 purchased wholesale power and discounts from capped rates to match the cost of providing
3 distribution services, and (v) with respect to cooperatives that were members of a power
4 supply cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale
5 power cost adjustment clauses of their tariffs pursuant to § ~~56-226~~ 56-231.33. Notwithstanding
6 the provisions of § 56-249.6, the Commission may authorize tariffs that include incentives
7 designed to encourage an incumbent electric utility to reduce its fuel costs by permitting
8 retention of a portion of cost savings resulting from fuel cost reductions or by other methods
9 determined by the Commission to be fair and reasonable to the utility and its customers.

10 C. A utility may petition the Commission to terminate the capped rates to all customers
11 any time after January 1, 2004, and such capped rates may be terminated upon the
12 Commission finding of an effectively competitive market for generation services within the
13 service territory of that utility. If the capped rates are continued after January 1, 2004, an
14 incumbent electric utility which is not, as of the effective date of this chapter, bound by a rate
15 case settlement adopted by the Commission that extends in its application beyond January 1,
16 2002, may petition the Commission for approval of a one-time change in the nongeneration
17 components of such rates.

18 D. Until the expiration or termination of capped rates as provided in this section, the
19 incumbent electric utility, consistent with the functional separation plan implemented under §
20 56-590, shall make electric service available at capped rates established under this section to
21 any customer in the incumbent electric utility's service territory, including any customer that,
22 until the expiration or termination of capped rates, requests such service after a period of
23 utilizing service from another supplier.

24 E. During the period when capped rates are in effect for an incumbent electric utility,
25 such utility may file with the Commission a plan describing the method used by such utility to
26 assure full funding of its nuclear decommissioning obligation and specifying the amount of the
27 revenues collected under either the capped rates, as provided in this section, or the wires

charges, as provided in § 56-583, that are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall approve the plan upon a finding that the plan is not contrary to the public interest.

§ 56-585. Default service.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them commencing with the ~~date~~ availability throughout the Commonwealth of customer choice for all retail customers as established pursuant to § 56-577. For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

B. ~~The~~ From time to time, the Commission shall designate ~~the~~ one or more providers of default service. In doing so, the Commission:

1. Shall take into account the characteristics and qualifications of prospective providers, including ~~cost~~ proposed rates, experience, safety, reliability, corporate structure, access to electric energy resources necessary to serve customers requiring such services, and other factors deemed necessary to promote the reliable provision of such services, to prevent the inefficient use of such services, and to protect the public interest;

2. May periodically, as necessary, conduct competitive bidding processes under procedures established by the Commission and, upon a finding that the public interest will be served, designate one or more willing and suitable providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers; ~~and~~

3. ~~In the absence of a finding~~ To the extent that default service is not provided pursuant to a designation under subdivision 2, may require ~~an incumbent electric utility or distribution utility~~ a distributor to provide, in a safe and reliable manner, one or more components of such

1 services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates
2 ~~which are fairly compensatory to the utility and which reflect any cost of energy prudently~~
3 ~~procured, including energy procured from the competitive market determined pursuant to~~
4 subsection C and for periods specified by the Commission; however, the Commission may not
5 ~~require an incumbent electric utility or distribution utility~~ a distributor, or affiliate thereof, to
6 provide any such services outside the territory in which such ~~utility~~ distributor provides service;
7 and

8 4. Notwithstanding imposition on a distributor by the Commission of the requirement
9 provided in subdivision 3, the Commission may thereafter, upon a finding that the public
10 interest will be served, designate through the competitive bidding process established in
11 subdivision 2 one or more willing and suitable providers to provide one or more components of
12 such services, in one or more regions of the Commonwealth, to one or more classes of
13 customers.

14 ~~C. The Commission shall~~ If a distributor is required to provide default services pursuant
15 to subdivision B. 3., after notice and opportunity for hearing, the Commission shall periodically,
16 for each distributor, determine the rates, terms and conditions for such default services
17 ~~consistent with the provisions of subdivision B 3 and Chapter 10 (§ 56-232 et seq.) of this title~~
18 ~~and shall establish such requirements for providers and customers as it finds necessary to~~
19 ~~promote the reliable and economic provision of such services and to prevent the inefficient use~~
20 ~~of such services. The Commission may use any rate method that promotes the public interest~~
21 ~~and may establish different rates, terms and conditions for different classes of customers.,~~
22 taking into account the characteristics and qualifications set forth in subdivision B. 1., as
23 follows:

24 1. Until the expiration or termination of capped rates, the rates for default service
25 provided by a distributor shall equal the capped rates established pursuant to subdivision A. 2.
26 of § 56-582. After the expiration or termination of such capped rates, the rates for default
27 services shall be based upon competitive market prices for electric generation services.

1 2. The Commission shall, after notice and opportunity for hearing, determine the rates,
2 terms and conditions for default service by such distributor on the basis of the provisions of
3 Chapter 10 (§ 56-232 et seq.) of this title, except that the generation-related components of
4 such rates shall be (i) based upon a plan approved by the Commission as set forth in
5 subdivision 3 or (ii) in the absence of an approved plan, based upon prices for generation
6 capacity and energy in competitive regional electricity markets.

7 3. Prior to a distributor's provision of default service, and upon request of such
8 distributor, the Commission shall review any plan filed by the distributor to procure electric
9 generation services for default service. The Commission shall approve such plan if the
10 Commission determines that the procurement of electric generation capacity and energy under
11 such plan is adequately based upon prices of capacity and energy in competitive regional
12 electricity markets. If the Commission determines that the plan does not adequately meet
13 such criteria, then the Commission shall modify the plan, with the concurrence of the
14 distributor, or reject the plan.

15 4. For purposes of this subsection, in determining whether regional electricity markets
16 are competitive and rates for default service, the Commission shall consider (i) the liquidity and
17 price transparency of such markets, (ii) whether competition is an effective regulator of prices
18 in such markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the
19 reasonable accessibility of such markets to the regional transmission entity to which the
20 distributor belongs, and (v) such other factors it finds relevant.

21 D. In implementing this section, the Commission shall take into consideration the need
22 of default service customers for rate stability and for protection from unreasonable rate
23 fluctuations.

24 DE. On or before July 1, 2004, and annually thereafter, the Commission shall
25 determine, after notice and opportunity for hearing, whether there is a sufficient degree of
26 competition such that the elimination of default service for particular customers, particular
27 classes of customers or particular geographic areas of the Commonwealth will not be contrary

1 to the public interest. The Commission shall report its findings and recommendations
2 concerning modification or termination of default service to the General Assembly and to the
3 Legislative Transition Task Force, not later than December 1, 2004, and annually thereafter.

4 ~~EE~~. A distribution electric cooperative, or one or more affiliates thereof, shall have the
5 obligation and right to be the supplier of default services in its certificated service territory. A
6 distribution electric cooperative's rates for such default services shall be the capped rate for
7 the duration of the capped rate period and shall be based upon the distribution electric
8 cooperative's prudently incurred cost thereafter. Subsections B and C shall not apply to a
9 distribution electric cooperative or its rates. Such default services, for the purposes of this
10 subsection, shall include the supply of electric energy and all services made competitive
11 pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates thereof,
12 elects or seeks to be a default supplier of another electric utility, then the Commission shall
13 designate the default supplier for that distribution electric cooperative, or any affiliate thereof,
14 pursuant to subsection B.

15 § 56-590. Divestiture, functional separation and other corporate relationships.

16 A. The Commission shall not require any incumbent electric utility to divest itself of any
17 generation, transmission or distribution assets pursuant to any provision of this chapter.

18 B. 1. The Commission shall, however, direct the functional separation of generation,
19 retail transmission and distribution of all incumbent electric utilities in connection with the
20 provisions of this chapter to be completed by January 1, 2002.

21 2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a
22 plan for such functional separation which may be accomplished through the creation of
23 affiliates, or through such other means as may be acceptable to the Commission.

24 3. Consistent with this chapter, the Commission may impose conditions, as the public
25 interest requires, upon its approval of any incumbent electric utility's plan for functional
26 separation, including requirements that (i) the incumbent electric utility's generation assets or,
27 at the election of the incumbent electric utility and if approved by the Commission pursuant to

subdivision 4 of this subsection, ~~their equivalent remain~~ are made available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period the ~~incumbent electric utility distributor~~ serves as a default provider as provided for in § 56-585; ~~and;~~ (ii) the incumbent electric utility receive Commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period the ~~incumbent electric utility distributor~~ serves as a default provider; and (iii) any such generation asset sold, transferred, or otherwise disposed of by the incumbent electric utility with Commission approval shall not be further sold, transferred, or otherwise disposed of during the capped rate period and, if applicable, during any period the distributor serves as default provider, without additional Commission approval.

4. If an incumbent electric utility proposes that the equivalent to its generation assets be made available pursuant to subdivision 3 of this subsection, the Commission shall determine the adequacy of such proposal and shall approve or reject such proposal based on the public interest.

5. In exercising its authority under the provisions of this section and under § 56-90, the Commission shall have no authority to regulate, on a cost-of-service basis or other basis, the price at which generation assets or their equivalent are made available for default service purposes. Such restriction on the Commission's authority to regulate, on a cost-of-service basis or other basis, prices for default service shall not affect the ability of an incumbent electric utility to offer to provide, and of the Commission to approve if appropriate the provision of, such services in any competitive bidding process pursuant to subdivision B 2 of § 56-585, on a cost-of-service basis or any other basis. The Commission's authority to regulate the price of default service shall be consistent with the pricing provisions applicable to a distributor pursuant to § 56-585.

C. Whenever pursuant to § 56-581.1 services are made subject to competition, the Commission shall direct the functional separation of such services to the extent necessary to achieve the purposes of this section. Each affected incumbent electric utility shall, by dates

1 prescribed by the Commission, submit for the Commission's approval a plan for such
2 functional separation.

3 D. The Commission shall, to the extent necessary to promote effective competition in
4 the Commonwealth, promulgate rules and regulations to carry out the provisions of this
5 section, which rules and regulations shall include provisions:

- 6 1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
- 7 2. Prohibiting functionally separate units from engaging in anticompetitive behavior or
8 self-dealing;
- 9 3. Prohibiting affiliated entities from engaging in discriminatory behavior towards
10 nonaffiliated units; and
- 11 4. Establishing codes of conduct detailing permissible relations between functionally
12 separate units.

13 E. Neither a covered entity nor an affiliate thereof may be a party to a covered
14 transaction without the prior approval of the Commission. Any such person proposing to be a
15 party to such transaction shall file an application with the Commission. The Commission shall
16 approve or disapprove such transaction within sixty days after the filing of a completed
17 application; however, the sixty-day period may be extended by Commission order for a period
18 not to exceed an additional 120 days. The application shall be deemed approved if the
19 Commission fails to act within such initial or extended period. The Commission shall approve
20 such application if it finds, after notice and opportunity for hearing, that the transaction will
21 comply with the requirements of subsection F, and may, as a part of its approval, establish
22 such conditions or limitations on such transaction as it finds necessary to ensure compliance
23 with subsection F.

24 F. A transaction described in subsection E shall not:

- 25 1. Substantially lessen competition among the actual or prospective providers of
26 noncompetitive electric service or of a service which is, or is likely to become, a competitive
27 electric service; or

2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

~~Nothing~~ Except as provided in subdivision B. 5. of § 56-590, nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements of subsection E that is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the requirements of Chapter 5 of this title.

§ 56-596. Advancing competition.

A. In all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goals of advancement of competition and economic development in the Commonwealth.

B. By September 1 of each year, the Commission shall report to the Legislative Transition Task Force and the Governor information on the status of competition in the Commonwealth, the status of the development of regional competitive markets, and its recommendations to facilitate effective competition in the Commonwealth as soon as practical. This report shall include any recommendations of actions to be taken by the General Assembly, Commission, electric utilities, suppliers, generators, distributors and regional transmission entities it considers to be in the public interest. Such recommendations shall include actions regarding the supply and demand balance for generation services, new and existing generation capacity, transmission constraints, market power, suppliers licensed and operating in the Commonwealth, and the shared or joint use of generation sites.

§ 58.1-2901. Collection and remittance of tax.

A. The ~~service-provider~~ of billing services shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such ~~service-provider~~ of billing services, the tax shall constitute a debt of the consumer to the Commonwealth, localities, and the State Corporation Commission. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed

1 by § 58.1-2900, the ~~service-provider~~ of billing services shall notify the State Corporation
2 Commission of the name and address of such consumer. If any consumer fails to pay a bill
3 issued by a ~~service-provider~~ of billing services including the tax that is imposed by § 58.1-
4 2900, the ~~service-provider~~ of billing services shall follow its normal collection procedures with
5 respect to the charge for electric service and the tax, and upon collection of the bill or any part
6 thereof shall (i) apportion the net amount collected between the charge for electric service and
7 the tax and (ii) remit the tax portion to the State Corporation Commission and the appropriate
8 locality. After the consumer pays the tax to the ~~service-provider~~ of billing services, the taxes
9 collected shall be deemed to be held in trust by such provider until remitted to the State
10 Corporation Commission and the appropriate locality.

11 When determining the amount of tax to collect from consumers of an electric utility that
12 is a cooperative which purchases, for the purpose of resale within the Commonwealth,
13 electricity from a federal entity that made payments during such taxable period to the
14 Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be
15 calculated on the basis of such federal entity's gross proceeds from the sale of electricity, the
16 ~~service-provider~~ of billing services shall deduct from each of the respective tax amounts
17 calculated in accordance with § 58.1-2900 an amount equal to the calculated tax amounts
18 multiplied by the ratio that the total cost of the power, including facilities rental, supplied by said
19 federal entity to said cooperative for resale within the Commonwealth bears to said
20 cooperative's total operating revenue within the Commonwealth for the taxable period. The
21 State Corporation Commission may audit the records and books of said cooperative to verify
22 that the tax imposed by this chapter has been correctly determined and properly remitted.

23 B. A ~~service-provider~~ of billing services shall remit monthly to the Commission the
24 amount of tax paid during the preceding month by the ~~service-provider's~~ provider of billing
25 services' consumers, except for (i) amounts added on the bills to utilities owned and operated
26 by municipalities which are collected by the entity providing transmission directly to such
27 utilities (or an association or agency of which the municipality is a member), which they shall

1 remit directly to the Commission and (ii) the portion which represents the local consumption
2 tax, which portion shall be remitted to the locality in which the electricity was consumed and
3 shall be based on such locality's license fee rate which it imposed. Amounts of the tax that are
4 added on the bills to utilities owned and operated by municipalities, which are collected by the
5 entity providing transmission directly to such utilities (or an association or agency of which the
6 municipality is a member), shall be remitted monthly by such entity to the Commission, except
7 that the portion which represents the local consumption tax shall be remitted to the locality in
8 which the electricity was consumed and shall be based on such locality's license fee rate which
9 it imposed.

10 C. The electric utility consumption tax shall be remitted monthly, on or before the last
11 day of the succeeding month of collection. Those portions of the electric utility consumption tax
12 that relate to the state consumption tax and the special regulatory tax shall be remitted to the
13 Commission; the portion that relates to the local consumption tax shall be remitted to the
14 localities. Failure to remit timely will result in a ten percent penalty.

15 D. Taxes on electricity sales in the year ending December 31, 2000, relating to the local
16 consumption tax, shall be paid in accordance with § 58.1-3731. Monthly payments in
17 accordance with subsection C shall commence on February 28, 2001.

18 E. For purposes of this section, "service provider" means the person who delivers
19 electricity to the consumer and "provider of billing services" means the person who bills a
20 consumer for electric services rendered. If both the service provider and another person
21 separately and directly bill a consumer for electricity service, then the service provider shall be
22 considered the "provider of billing services."

23 F. The portion of the electric utility consumption tax relating to the local consumption tax
24 replaces and precludes localities from imposing a license tax in accordance with § 58.1-3731
25 and the business, professional, occupation and license tax in accordance with Chapter 37 (§
26 58.1-3700 et seq.) on electric suppliers subsequent to December 31, 2000, except as provided
27 in subsection D. If the license fee rate imposed by a locality is less than the equivalent of the

1 local consumption tax rate component of the consumption tax paid under subsection A of §
2 58.1-2900, the excess collected by the Commission shall constitute additional state
3 consumption tax revenue and shall be remitted by the Commission to the state treasury.

4 G. The Department of Taxation may audit the books and records of any electric utility
5 owned and operated by a municipality (or an association or agency of which the municipality is
6 a member) to verify that the tax imposed by this chapter has been correctly determined and
7 properly remitted to the Commission.

8 § 58.1-2902. Electric utility consumption tax relating to the special regulatory tax; when
9 not assessed or assessed only in part.

10 A. The Commission may in the performance of its function and duty in levying the
11 electric utility consumption tax relating to the special regulatory tax, omit the levy on any
12 portion of the tax fixed in § 58.1-2900 as is unnecessary within the Commission's sole
13 discretion for the accomplishment of the objects for which the tax is imposed, including a
14 reasonable margin in the nature of a reserve fund.

15 B. The Commission shall notify ~~all service providers~~ each provider of billing services, as
16 defined in subsection E of § 58.1-2901, collecting the tax on consumers of electricity of any
17 change in the electric utility consumption tax relating to the special regulatory tax not later than
18 the first day of the second month preceding the month in which the revised rate is to take
19 effect.

20 § 58.1-3814. Water or heat, light and power companies

21 A. Any county, city or town may impose a tax on the consumers of the utility service or
22 services provided by any water or heat, light and power company or other corporations coming
23 within the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, which tax shall not be
24 imposed at a rate in excess of twenty percent of the monthly amount charged to consumers of
25 the utility service and shall not be applicable to any amount so charged in excess of fifteen
26 dollars per month for residential customers. Any city, town or county that on July 1, 1972,
27 imposed a utility consumer tax in excess of limits specified herein may continue to impose

1 such a tax in excess of such limits, but no more. For taxable years beginning on and after
2 January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be
3 imposed pursuant to subsections C through J of this section only.

4 B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or
5 structure already in existence, shall not be effective until sixty days subsequent to written
6 notice by certified mail from the county, city or town imposing such tax or change thereto, to
7 the registered agent of the utility corporation that is required to collect the tax.

8 C. Any county, city or town may impose a tax on the consumers of services provided
9 within its jurisdiction by any electric light and power, water or gas company owned by another
10 municipality; provided, that no county shall be authorized under this section to impose a tax
11 within a municipality on consumers of services provided by an electric light and power, water
12 or gas company owned by that municipality. Any county tax imposed hereunder shall not apply
13 within the limits of any incorporated town located within such county which town imposes a
14 town tax on consumers of utility service or services provided by any corporation coming within
15 the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, provided that such town (i)
16 provides police or fire protection, and water or sewer services, provided that any such town
17 served by a sanitary district or service authority providing water or sewer services or served by
18 the county in which the town is located when such service or services are provided pursuant to
19 an agreement between the town and county shall be deemed to be providing such water and
20 sewer services itself, or (ii) constitutes a special school district and is operated as a special
21 school district under a town school board of three members appointed by the town council.

22 Any county, city or town may provide for an exemption from the tax for any public safety
23 answering point as defined in § 58.1-3813.1.

24 Any city with a population of not less than 27,000 and not more than 28,500 may
25 provide an exemption from the tax for any church or religious body entitled to an exemption
26 pursuant to Article 4 (§ 58.1-3650 et seq.) of Chapter 36 of this title.

1 Any municipality required to collect a tax imposed under authority of this section for
2 another city or county or town shall be entitled to a reasonable fee for such collection.

3 D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder
4 shall apply within the limits of any tier-city located in such county, as may be provided in the
5 agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same
6 consumers of utility service or services, provided that the combined county and tier-city rates
7 do not exceed the maximum permitted by state law.

8 E. The tax authorized by this section shall not apply to utility sales of products used as
9 motor vehicle fuels.

10 F.1. Any county, city or town may impose a tax on consumers of electricity provided by
11 electric suppliers as defined in § 58.1-400.2.

12 The tax so imposed shall be based on kilowatt hours delivered monthly to consumers,
13 and shall not exceed the limits set forth in this subsection. The ~~service-provider~~ of billing
14 services shall bill the tax to all users who are subject to the tax and to whom it ~~delivers~~ bills for
15 electricity service, and shall remit such tax to the appropriate locality in accordance with §
16 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001,
17 based on the monthly revenue amount charged to consumers of electricity shall convert its tax
18 to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum
19 billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the
20 amount of the tax among electricity consumer classes and (ii) maintain annual revenues being
21 received by localities from such tax at the time of the conversion. ~~Current~~ The current service
22 ~~providers~~ provider shall provide to localities no later than August 1, 2000, information to enable
23 localities to convert their tax. The maximum amount of tax imposed on residential consumers
24 as a result of the conversion shall be limited to three dollars per month, except any locality that
25 imposed a higher maximum tax on July 1, 1972, may continue to impose such higher
26 maximum tax on residential consumers at an amount no higher than the maximum tax in effect
27 prior to January 1, 2001, as converted to kilowatt hours. For nonresidential consumers, the

1 initial maximum rate of tax imposed as a result of the conversion shall be based on the annual
2 amount of revenue received from each class of nonresidential consumers in calendar year
3 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential
4 consumers shall be based at a class level on such factors as existing minimum charges, the
5 amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year
6 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for
7 nonresidential consumers shall not apply after January 1, 2004, which is the scheduled date of
8 completion of the electric deregulation transition period pursuant to the Virginia Electric Utility
9 Restructuring Act (§ 56-576 et seq.). On or before October 31, 2000, any locality imposing a
10 tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed
11 so that the ordinance conforms to the requirements of subsections C through J of this section.
12 Notice of such amendment shall be provided to service providers in a manner consistent with
13 subsection B of this section except that "registered agent of the ~~service-provider~~ of billing
14 services" shall be substituted for "registered agent of the utility corporation." Any conversion of
15 a tax to conform to the requirements of this subsection shall not be effective before the first
16 meter reading after December 31, 2000, prior to which time the tax previously imposed by the
17 locality shall be in effect.

18 2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of
19 eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the
20 electric grid to such customer-generators, minus the kilowatt hours generated and fed back to
21 the electric grid by such customer-generators.

22 G. Until the consumer pays the tax to such ~~service-provider~~ of billing services, the tax
23 shall constitute a debt to the locality. If any consumer receives and pays for electricity but
24 refuses to pay the tax on the bill that is imposed by a locality, the ~~service-provider~~ of billing
25 services shall notify the locality of the name and address of such consumer. If any consumer
26 fails to pay a bill issued by a ~~service-provider~~ of billing services, including the tax imposed by a
27 locality as stated thereon, the ~~service-provider~~ of billing services shall follow its normal

1 collection procedures with respect to the charge for electric service and the tax, and upon
2 collection of the bill or any part thereof shall (i) apportion the net amount collected between the
3 charge for electric service and the tax and (ii) remit the tax portion to the appropriate locality.
4 After the consumer pays the tax to the ~~service-provider~~ of billing services, the taxes shall be
5 deemed to be held in trust by such ~~service-provider~~ of billing services until remitted to the
6 localities.

7 H. Any county, city or town may impose a tax on consumers of natural gas provided by
8 pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF
9 delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The
10 pipeline distribution company or gas utility shall bill the tax to all users who are subject to the
11 tax and to whom it delivers gas and shall remit such tax to the appropriate locality in
12 accordance with § 58.1-2905. Any locality that imposed a tax pursuant to this section prior to
13 January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall
14 convert to a tax based on CCF delivered monthly to consumers, taking into account minimum
15 billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount
16 of the tax among gas consumer classes and (ii) maintain annual revenues being received by
17 localities from such tax at the time of the conversion. Current pipeline distribution companies
18 and gas utilities shall provide to localities not later than August 1, 2000, information to enable
19 localities to convert their tax. The maximum amount of tax imposed on residential consumers
20 as a result of the conversion shall be limited to three dollars per month, except any locality that
21 imposed a higher maximum tax on July 1, 1972, may continue to impose such higher
22 maximum tax on residential consumers at an amount no higher than the maximum tax in effect
23 prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial
24 maximum rate of tax imposed as a result of the conversion shall be based on the annual
25 amount of revenue received and due from each of the nonresidential gas purchase and gas
26 transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates
27 imposed on nonresidential consumers shall be based at a class level on such factors as

1 existing minimum charges, the amount of CCF used, and the amount of consumer utility tax
2 paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax
3 imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning
4 January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from
5 imposing a consumer utility tax on nonresidential customers up to the amount authorized by
6 subsection A.

7 On or before October 31, 2000, any locality imposing a tax on consumers of gas shall
8 duly amend its ordinance under which such tax is imposed so that the ordinance conforms to
9 the requirements of subsections C through J of this section. Notice of such amendment shall
10 be provided to pipeline distribution companies and gas utilities in a manner consistent with
11 subsection B except that "registered agent of the pipeline distribution company or gas utility"
12 shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to
13 conform to the requirements of this subsection shall not be effective before the first meter
14 reading after December 31, 2000, prior to which time the tax previously imposed by the locality
15 shall be in effect.

16 I. Until the consumer pays the tax to such gas utility or pipeline distribution company,
17 the tax shall constitute a debt to the locality. If any consumer receives and pays for gas but
18 refuses to pay the tax that is imposed by the locality, the gas utility or pipeline distribution
19 company shall notify the localities of the names and addresses of such consumers. If any
20 consumer fails to pay a bill issued by a gas utility or pipeline distribution company, including
21 the tax imposed by a locality, the gas utility or pipeline distribution company shall follow its
22 normal collection procedures with regard to the charge for the gas and the tax and upon
23 collection of the bill or any part thereof shall (i) apportion the net amount collected between the
24 charge for gas service and the tax and (ii) remit the tax portion to the appropriate locality. After
25 the consumer pays the tax to the gas utility or pipeline distribution company, the taxes shall be
26 deemed to be held in trust by such gas utility or pipeline distribution company until remitted to
27 the localities.

1 J. For purposes of this section:

2 "Class of consumers" means a category of consumers served under a rate schedule
3 established by the pipeline distribution company and approved by the State Corporation
4 Commission.

5 "Gas utility" has the same meaning as provided in § 56-235.8.

6 "Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

7 "Service provider" ~~has~~ and "provider of billing services" have the same meaning
8 meanings as provided in subsection E of § 58.1-2901, and "class" of consumers means a
9 category of consumers defined as a class by their service provider.

10 **2. That the provisions of clause (iii) of subdivision B. 3. of § 56-590 of the Code of**
11 **Virginia shall not apply to any sale, transfer or disposal of an incumbent electric utility's**
12 **generation assets that was approved by the Commission pursuant to such subdivision**
13 **as it was in effect prior to the effective date of this act.**

14 #